

The Honorable Kymberly K. Evanson

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
EDUCATION, et al.,

Defendants.

NO. 2:25-cv-01228-KKE

PLAINTIFF STATES' OPPOSITION TO  
DEFENDANTS MOTION FOR ORDER  
STAYING CASE

NOTE ON MOTION CALENDAR:  
October 7, 2025

Plaintiff States respectfully oppose Defendants' motion for an undefined and indefinite stay in light of the lapse in appropriations. Defendants' requested relief would indefinitely delay the Court from hearing Defendants' Motion to Dismiss and potentially delay the Court's decision regarding Plaintiff States' Motion for Preliminary Injunction, which describes in depth the harms the Defendants' Non-Continuation Decision has imposed on Plaintiff States and the public—harms which have only continued to escalate as the parties approach the end of the discontinued Program grants on December 31, 2025. Further, the relief requested is unnecessary, as the Department of Justice's (DOJ) own contingency plan expressly authorizes DOJ attorneys to continue litigating civil cases if the Court denies a stay. A stay would be particularly inequitable given the Department has announced new grant competitions for each Program with an application deadline of October 29, 2025, after which Defendants will award new grants and obligate funds that Plaintiffs could never recover.

1 This Court’s discretion to grant or deny a stay of proceedings “calls for the exercise of  
 2 judgment, which must weigh competing interests.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55  
 3 (1936). Here, the balance of interests strongly counsels against granting a stay due to the  
 4 significant harms a stay would impose on Plaintiff States and the public.

5 A stay at this stage of proceedings risks serious and irreparable harm to Plaintiff States.  
 6 Plaintiff States challenged the Non-Continuation Decision, comprising of unannounced and  
 7 secret policy changes that changed Defendants’ approach to continuation award decisions.  
 8 Defendants changed their approach in order to implement new priorities through discontinuance  
 9 of Program grants in violation of federal statute and Department regulations. As detailed in  
 10 Plaintiff States’ pending Motion for Preliminary Injunction, as well as their opposition to  
 11 Defendants’ prior motion for relief from deadlines, the Non-Continuation Decision is currently  
 12 disrupting established education and mental healthcare ecosystems, causing substantial short-  
 13 and long-term harms to the public health and safety. *See* Dkt. # 49 at pp. 36–40; Dkt. # 168 at  
 14 pp. 2–3. The Non-Continuation Decision is causing grantees to begin the painful process of  
 15 shuttering programs, losing skilled mental health service providers and program staff, losing the  
 16 opportunity to train future mental health service providers, and ending much-needed mental  
 17 health services for school-aged children. *See* Dkt. # 49 at pp. 36–40; Dkt. # 168 at pp. 2–3. The  
 18 risks of irreparable harm are especially high because it is unclear how long the lapse in  
 19 appropriations will continue, meaning Plaintiffs will continue to suffer the degrading effects of  
 20 uncertainty as the December 31, 2025, budget year cliff looms on the fast-approaching horizon.  
 21 Plaintiffs need certainty regarding the continuation award process—both to understand the status  
 22 of the discontinued Program grants, and to understand their continuation rights when deciding  
 23 whether or not to apply to the new Program competitions. And Defendants, too, will be aided by  
 24 a preliminary injunction order that clarifies the continuation regulation and enjoins Defendants  
 25 from applying their changed, non-performance-based approach to the continuation award  
 26 process when they resume their work after the shutdown ends.

1 In their motion, Defendants do not claim that the lapse in appropriations will delay or  
 2 otherwise interfere with their implementation and enforcement of the Non-Continuation  
 3 Decision. Instead, they claim that “Department attorneys and employees of the federal  
 4 government are prohibited from working” during the lapse, “except in very limited  
 5 circumstances.” Dkt. # 182 at p. 3. Yet Plaintiffs’ grants are still discontinued, and Defendants  
 6 have begun soliciting new grant competition applications for Program grants, inviting  
 7 applications through October 29, 2025. *See* Dkt. ## 179-1, 179-2. As such, Defendants’ stay asks  
 8 this Court to allow them to continue violating the regulations, the General Education Provisions  
 9 Act, and the Constitution during the lapse, causing direct and irreparable harm to Plaintiff States,  
 10 while indefinitely preventing Plaintiff States from seeking an injunction to halt the Non-  
 11 Continuation Decision. The lapse in appropriations cannot—and should not—serve as a shield  
 12 for Defendants’ unlawful conduct.

13 Further, the DOJ’s own guidance authorizes the DOJ to continue work on this matter  
 14 despite the lapse in appropriations. On September 29, 2025, the DOJ issued a contingency plan  
 15 setting forth its planned operations during a lapse in appropriations. *See* U.S. Dep’t of Justice,  
 16 FY 2026 Contingency Plan (Sept. 29, 2025), <https://www.justice.gov/jmd/media/1377216/dl>,  
 17 (Contingency Plan). For civil litigation, the DOJ instructs its attorneys to approach the courts  
 18 and request that active cases be postponed until funding is resumed. *Id.* But if a court denies a  
 19 stay, “the Government will comply with the court’s order, which would constitute express legal  
 20 authorization for the activity to continue” within the meaning of 31 U.S.C. § 1342. *Id.*; *see also*  
 21 Order Denying Motion to Stay, *Rhode Island v. Trump*, No. 1:25-cv-00128-JJM-LDA, Dkt. # 84  
 22 (D. R.I. Oct. 2, 2025) (noting that “[t]he Court is required to continue its constitutional  
 23 functions”); *Kornitzky Grp., LLC v. Elwell*, 912 F.3d 637, 638 (D.C. Cir. 2019) (J. Srinivasan  
 24 concurring) (discussing the DOJ’s largely similar 2019 Contingency Plan). In other words, “[i]f  
 25 a court denies a litigator’s request to postpone a case and orders it to continue, the litigation will  
 26 become an excepted activity that can continue during the lapse.” *See* Contingency Plan at 7.

1 Because federal law authorizes the payment of wages for “excepted activities” during a lapse in  
 2 appropriations, any harm to Defendants’ counsel would be mitigated should this Court deny a  
 3 stay. *See* 31 U.S.C. § 1341(c)(2); *see also* Contingency Plan at 3 (DOJ is required to “limit its  
 4 civil litigation staffing to the minimum level needed to comply with the court’s order [denying  
 5 a request for stay] and to protect life and property”).

6 A stay risks irreparable harm to the health and safety of Plaintiff States’ residents.  
 7 Dkt. # 49 at pp. 36–38, 40. Considering the lack of harm to Defendants or their counsel, the  
 8 balance of interests weighs heavily in favor of denying a stay. Federal courts have often declined  
 9 requests by the DOJ to stay proceedings due to a lapse of appropriations. For instance, “when  
 10 federal appropriations lapsed in 2013, resulting in a ‘shutdown’ from October 1 to  
 11 October 17, 2013, [the D.C. Circuit] received Government motions to stay oral argument in at  
 12 least sixteen cases.” *Kornitzky Grp.*, 912 F.3d at 638. In “every one of those motions,” the  
 13 government counsel cited the same statute that Defendants cite here, 31 U.S.C. § 1342, claiming  
 14 that it prohibited them from working. *Id.* But the D.C. Circuit denied “every one of these  
 15 motions,” even when a stay was unopposed, “and every time, the Government then participated  
 16 in oral argument.” *Id.* This practice of denying motions to stay due to lapses of appropriations  
 17 continued during the most recent government shutdown from December 22, 2018 to  
 18 January 25, 2019. *Id.*

19 Multiple federal courts have already denied requests by the DOJ to stay proceedings  
 20 during this current lapse of appropriations, including federal appellate courts. For instance, the  
 21 Ninth Circuit has ordered all DOJ attorneys to appear at every oral argument as scheduled,  
 22 despite the lapse in appropriations. *See* Supplemental Administrative Order, United States Court  
 23 of Appeals for the Ninth Circuit, C.J. Murguia, (Oct. 1, 2025) [https://cdn.ca9.uscourts.gov](https://cdn.ca9.uscourts.gov/datastore/announcements/Final-Order.pdf)  
 24 [/datastore/announcements/Final-Order.pdf](https://cdn.ca9.uscourts.gov/datastore/announcements/Final-Order.pdf). Similarly, the D.C. Circuit has announced that  
 25 “[c]ases calendared for oral argument during the months of October and November will proceed  
 26 as scheduled.” Court Operations in the Event of a Government Shutdown (Oct. 1, 2025)

1 <https://www.cadc.uscourts.gov/news/court-operations-event-government-shutdown-0>. The  
 2 Federal Circuit has announced that it “will not entertain any motions for extension based solely  
 3 on a lapse in appropriations.” Administrative Order, United States Court of Appeals for the  
 4 Federal Circuit, C.J. Moore (Oct. 1, 2025) [https://www.cafc.uscourts.gov/wp-content](https://www.cafc.uscourts.gov/wp-content/uploads/Announcements/AdministrativeOrders/AdministrativeOrder-OperationsDuringLapseInAppropriations.pdf)  
 5 [/uploads/Announcements/AdministrativeOrders/AdministrativeOrder-OperationsDuringLapseI](https://www.cafc.uscourts.gov/wp-content/uploads/Announcements/AdministrativeOrders/AdministrativeOrder-OperationsDuringLapseInAppropriations.pdf)  
 6 [nAppropriations.pdf](https://www.cafc.uscourts.gov/wp-content/uploads/Announcements/AdministrativeOrders/AdministrativeOrder-OperationsDuringLapseInAppropriations.pdf). And the First Circuit recently denied the DOJ’s motion to stay a status  
 7 report deadline. *See Order, Planned Parenthood Federation of America v. Kennedy*,  
 8 No. 25-1755 (1st Cir. Oct. 2, 2025).

9 District courts have also repeatedly denied the DOJ’s motions for stays due to the current  
 10 lapse of appropriations. *See Order Denying Motion to Stay, Guerrero Orellana v. Moniz*,  
 11 No. 25-cv-12664-MJJ, Dkt. # 51 (D. Mass. Oct. 2, 2025); *Order Denying Motion to Stay, Rhode*  
 12 *Island v. Trump*, No. 1:25-cv-00128-JJM-AEM, Dkt. Text Order 10/02/25 (D. R.I. Oct. 2, 2025)  
 13 (denying motion to stay and citing DOJ’s Contingency Plan); *Order Denying Motion to Stay,*  
 14 *New York v. Kennedy.*, No. 1:25-cv-00196-MRD-PAS, Dkt. Text Order 10/03/25 (D. R.I.  
 15 Oct. 3, 2025); *Order Denying Motion to Stay, United States v. Rhode Island*,  
 16 No. 1:14-cv-00175-JJM-PAS, Dkt. Text Order 10/02/25 (D. R.I. Oct. 2, 2025); *Order Denying*  
 17 *Motion to Stay, J.P. Morgan Chase Bank v. Carver*, No. 1:24-cv-00478-MRD-AEM,  
 18 Dkt. Text Order 10/03/25 (D. R.I. Oct. 3, 2025); *Order Denying in Part and Granting in Part*  
 19 *Motion to Stay, New York v. DOJ*, No. 1:25-cv-00499-MRD-AEM, Dkt. Text Order 10/06/25  
 20 (D. R.I. Oct. 6, 2025) (denying stay); *Order Denying Motion to Stay, District of Columbia v.*  
 21 *Trump*, No. 1:25-cv-03005-JMC, Dkt. Text Order 10/02/25 (D. D.C. Oct. 2, 2025) (same).

22 In short, this Court should exercise its discretion to deny Defendants’ motion to stay  
 23 proceedings, due to the harms such a stay would cause. *See Landis*, 299 U.S. at 254–55.

DATED this 7th day of October 2025.

I certify that this memorandum contains 1507 words in compliance with Local Civil Rules.

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